

in the course of performing official duties or because of the employee's official relationship with the Department of Health and Human Services unless authorized by the Agency head pursuant to this part based on a determination by the Agency head, after consultation with the Office of the General Counsel, that compliance with the request would promote the objectives of the Department of Health and Human Services.

(b) The Office of the General Counsel will request the assistance of the Department of Justice where necessary to represent the interests of the Department of Health and Human Services and its employees under this part.

§ 2.4 Procedures when voluntary testimony is requested or when an employee is subpoenaed.

(a) All requests for testimony by a Department of Health and Human Services employee in his or her official capacity and not subject to the exceptions set forth in § 2.1(d), of this part, must be in writing and must state the nature of the requested testimony, why the information sought is unavailable by any other means, and the reasons why the testimony would be in the interests of the Department of Health and Human Services or the Federal Government.

(b) If the Agency head denies approval to comply with a subpoena for testimony, or if the Agency head has not acted by the return date, the employee will appear at the stated time and place, unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate (in such circumstances as, for example, an instance where the subpoena was not validly issued or served, where the subpoena has been withdrawn, or where discovery has been stayed), produce a copy of these regulations, and respectfully decline to testify or produce any documents on the basis of these regulations.

§ 2.5 Subpoenas duces tecum.

(a) Subpoenas duces tecum for records of the Department of Health and Human Services shall be deemed a request for records under the Freedom of Information Act and shall be han-

dled pursuant to the rules governing public disclosure established in 45 CFR Part 5.

(b) Whenever a subpoena duces tecum, in appropriate form, has been lawfully served upon a Department of Health and Human Services' employee commanding the production of any record, such employee, after consultation with the Office of the General Counsel, shall appear in response thereto, respectfully decline to produce the record(s) on the ground that it is prohibited by this section, and state that the production of the record(s) involved will be handled by the procedures and disclosure rules established in 45 CFR Part 5.

§ 2.6 Certification and authentication of records.

Upon request, Department of Health and Human Services' agencies will certify the authenticity of copies of records that are to be disclosed pursuant to 45 CFR Part 5 and will authenticate copies of records previously disclosed. Fees for such certification are set forth in 45 CFR 5.43(e).

[52 FR 37146, Oct. 5, 1987, as amended at 55 FR 4611, Feb. 9, 1990]

PART 3—CONDUCT OF PERSONS AND TRAFFIC ON THE NATIONAL INSTITUTES OF HEALTH FEDERAL ENCLAVE

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